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*Attorneys for Defendant,  
Counterclaimant and Third-Party Plaintiff,  
Hartford Fire Insurance Co.*

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

MASON AND DIXON INTERMODAL, INC.  
Plaintiff,

v.

LAPMASTER INTERNATIONAL, LLC and  
HARTFORD INSURANCE CO.  
Defendants.

HARTFORD FIRE INSURANCE CO,  
individually and as subrogee of Lapmaster  
International, LLC,

Counterclaimant,

v.

MASON AND DIXON INTERMODAL, INC.  
Counterclaimant.

HARTFORD FIRE INSURANCE  
COMPANY, individually and as subrogee of  
Lapmaster International, LLC,

Third-Party Plaintiff,

v.

ITG TRANSPORTATION SERVICES, INC.;  
WORLD EXPRESS SHIPPING,  
TRANSPORTATION AND FORWARDING  
SERVICES, INC. d/b/a W.E.S.T.  
FORWARDING SERVICES; DOES I  
through X, inclusive:

Third-Party Defendants.

Case No. CV-08-1232-MEJ

**HARTFORD FIRE INSURANCE  
COMPANY'S THIRD-PARTY  
COMPLAINT**

1 Third-Party Plaintiff HARTFORD FIRE INSURANCE COMPANY ("Hartford" or  
2 "Third-Party Plaintiff"), individually and as subrogee of its insured, Lapmaster International, LLC,  
3 comes now for its Third-Party Complaint against Third-Party Defendants, and each of them, and  
4 alleges as follows

### 5 JURISDICTION AND VENUE

6 1. Hartford's Third-Party Complaint is based on Rule 14, 19, and 20 of the Federal  
7 Rules of Civil Procedure. This Court has jurisdiction over the claims for declaratory relief under  
8 28 U.S.C. § 2201. This Court also has supplemental jurisdiction over Hartford's State law claims  
9 against ITG TRANSPORTATION SERVICES, INC. ("ITG") and WORLD EXPRESS  
10 SHIPPING, TRANSPORTATION AND FORWARDING SERVICES, INC. d/b/a W.E.S.T.  
11 FORWARDING SERVICES ("West Forwarding") because these claims result from a common  
12 nucleus of operative facts and relate to the federal claims alleged in the Complaint of Mason and  
13 Dixon Intermodal, Inc. ("MDII") and Counterclaims of Hartford.

14 2. Hartford is informed and believes and on that basis alleges that this Court also has  
15 jurisdiction based on diversity of citizenship, in that this is a civil action between citizens of  
16 different States and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

17 3. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §  
18 1391(b), in that the port of arrival of the cargo shipment was Oakland, California, within this  
19 Judicial District, and further, that the ground transportation of the Machines also occurred in this  
20 District.

21 4. As alleged above, the port of arrival and the interchange of equipment occurred in  
22 Oakland, California. This action is therefore properly assigned in the San Francisco or Oakland  
23 Division of this Court.

### 24 PARTIES:

25 5. Lapmaster International, LLC is, and was at all relevant times, an Illinois  
26 corporation with its principal place of business in Mount Prospect, Illinois.

6           8.     Hartford is informed and believes and on that basis alleges that Third-Party  
7 Defendant ITG is, and was at all relevant times, an Illinois corporation, with its principal place of  
8 business in Illinois.

10. The true names or capacities of Does I through X are presently unknown to Hartford, which therefore sues them by fictitious names. Hartford is informed and believes and on that basis alleges that each of the Doe Third-Party Defendants is responsible under federal law, federal or State common law, or in some other manner for the cargo damage and other damages, losses and expenses referred to in this Complaint. Hartford is further informed and believes and on that basis alleges that the conduct of each fictitiously named Third-Party Defendant proximately caused or contributed to such damages and losses. Hartford will amend its Third-Party Complaint to allege the true names and capacities of the Doe Defendants when ascertained.

23 GENERAL ALLEGATIONS

26      13.      The Machines were shipped from Japan by Hamai Co., Ltd. See Exhibit A.

3

1 Port of Yokohama, Japan pursuant to Waybill No. Y05F4451887 and other documents  
2 (collectively, the "agreements"). A true and correct copy of Waybill No. Y05f4451887 is attached  
3 as Exhibit A and is incorporated by reference.

4 15. The Machines were transported from Japan to the Port of Oakland, California.

5 16. At Oakland, California, Hartford is informed and believes and on that basis alleges  
6 that ITG and West Forwarding arranged for motor transport of the Machines from Oakland to  
7 Fremont, California.

8 17. The Waybill (Exhibit A) is not a through bill of lading and was not intended to  
9 cover the ground transportation of the Machines. The Waybill did not identify MDII, made no  
10 reference to a ground transportation carrier, and made no reference to the delivery of the Machines  
11 from the Port of Oakland to Fremont, California.

12 18. On or about December 27, 2007, MDII picked up the Machines at the Port of  
13 Oakland and began transporting the same to Fremont, California. *See* Import Dispatch, a true and  
14 correct copy of which is attached as Exhibit B and incorporated by reference.

15 19. On or about December 27, 2007, MDII negligently, carelessly and recklessly  
16 operated and drove their tractor trailer truck so as to cause the tractor trailer truck and Machines,  
17 as cargo, to collide with certain overpasses on Interstate 880 in California.

18 20. The negligent, careless and reckless operation of the tractor trailer truck and  
19 carriage of the cargo by MDII and its agents proximately caused damage to the Machines, and  
20 other damages, losses and expenses.

21 21. Hartford issued an insurance policy to its insured Lapmaster under policy number  
22 83 UUQ RZ2879.

23 22. As a result of the collision causing damage to the Machines, Lapmaster filed a  
24 claim for loss under the policy with Hartford.

25 23. The policy provided, in pertinent part, that in the event of an insured loss, Hartford  
26 would be subrogated to any rights that Lapmaster might have against a third party who is  
27 responsible for that loss to the extent of their payments. In addition to contractual  
28

1 subrogation rights, Hartford has rights pursuant to equitable subrogation.

2 24. As a result of the collision, and providing coverage under the policy, Hartford  
3 incurred money damages when it compensated or reimbursed and as it is continuing to  
4 compensate or reimburse its insured in amounts to be proven at trial, but in no event less than  
5 \$820,554.92, the exact amount to be proven at trial.

6 25. In addition to the amounts paid out under the policy, Hartford seeks recovery of  
7 prejudgment interest on the liquidated damages to the extent allowed pursuant to California law,  
8 including California Civil Code §§ 3287 and 3288.

9 **FIRST CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 26. Hartford incorporates by reference each of its allegation in Paragraphs 1 through  
12 25, above.

13 27. An actual controversy has arisen and now exists between Hartford and Third-Party  
14 Defendants ITG and West Forwarding regarding their respective rights and duties under the  
15 agreements referred to above for carriage of the Machines.

16 28. Hartford contends, and Third-Party Defendants deny, that Hartford is entitled to  
17 compensation from Third-Party Defendants under the agreements for all cargo damage or  
18 destroyed. Hartford further contends, and Third-Party Defendants deny, that Third-Party  
19 Defendants are liable under the written agreements, general maritime law, and the law of  
20 indemnity and contribution, for other damages, losses and expenses incurred by Hartford and its  
21 insured. Hartford requests the following specific relief:

22 (A) A declaration that Third-Party Defendants are liable for all damage to the  
23 Machines;

24 (B) That Third-Party Defendants are legally responsible for the other damages,  
25 losses and expenses incurred by Hartford and set forth above;

26 (C) That Third-Party Defendants are legally responsible for such cargo damage  
27 and other damages, losses and expenses under the written agreements;

1 (D) That Third-Party Defendants are liable under general maritime and the law  
2 of indemnity and contribution for the cargo damage and other damages, losses and expenses  
3 referred to above; and

4 (E) That Hartford is entitled to recover attorneys' fees and costs from Third-  
5 Party Defendants incurred in Hartford's defense of MDII's action and in prosecuting the Third-  
6 Party action.

7 29. Such a declaration is necessary and appropriate at this time, so that the parties may  
8 ascertain their respective rights and duties and avoid a multiplicity of actions.

9 **SECOND CAUSE OF ACTION**

10 **(Breach of Contract)**

11 30. Hartford incorporates by reference each of its allegations in Paragraphs above.

12 31. Third-Party Defendants hired, retained, recommended and entrusted MDII to  
13 carefully, safely, and properly pickup the Machines from the Port of Oakland and deliver to  
14 Fremont, California.

15 32. MDII, and its drivers or employees, was hired and retained by Third-Party  
16 Defendants, and were at all relevant times the agents or subagents of Third-Party Defendants.

17 33. Third-Party Defendants, through their own conduct and/or the conduct of its agents  
18 or subagents, caused damage to the Machines, and in so doing, breached the agreements referred  
19 to above. Hartford is informed and believes and on that basis alleges that the contracts include  
20 commitments by Third-Party Defendants which were part of the contract of carriage and/or were  
21 intended to benefit Lapmaster.

22 34. Third-Party Defendants knew, or should have known, the value of the Machines.

23 35. Third-Party Defendants were required to, but failed to, hire, retained, recommend,  
24 and/or entrust the Machines to carriers and/or agents that were reputable, reliable, safe,  
25 knowledgeable, and whom would comply with generally accepted trucking standards and  
26 applicable laws and regulations.

27 36. Third-Party Defendants were required to, yet failed to, ensure that the motor  
28



1 carrier it retained and/or recommended contained all the appropriate and necessary information  
2 about the Machines and any specialized instructions regarding the cargo and its delivery.

3 37. Third-Party Defendants were required to, yet failed to, ensure that its client,  
4 Lapmaster, was properly protected in the event of damage to the Machines during their transport,  
5 whether caused by its motor carrier or agent, to include but not limited to procure or bind  
6 insurance coverage it quoted Lapmaster.

7 38. Lapmaster performed all terms and conditions of the contracts required on its part.  
8 Hartford is informed and believes and on that basis alleges that the damages and losses alleged  
9 above were caused by MDII, as motor carrier and/or by Third-Party Defendants and its agents and  
10 subagents.

11 39. Third-Party Defendants' breach of the contracts, through its own conduct and/or  
12 the conduct of its agents and subagents, has proximately caused damage to Lapmaster in the form  
13 of damage to the Machines and other damages, losses and expenses, in an amount subject to proof  
14 at trial.

15 40. As a direct and proximate result of the Third-Party Defendants' conduct in  
16 breaching the contracts, Lapmaster sustained damages in an amount to be proven at the time of  
17 trial, but in no event less than \$820,554.92.

18 41. Pursuant to the terms and conditions of its policy of insurance with its insured,  
19 Hartford has indemnified and paid, and is in the process of indemnifying and paying, Lapmaster  
20 for such covered losses in an amount of \$820,554.92, an exact amount to be proven at trial, and  
21 thereby has become subrogated to the rights of its insured against Third-Party Defendants..

### 22 **THIRD CAUSE OF ACTION**

#### 23 **(Implied Indemnity)**

24 42. Third-Party Plaintiff incorporates by reference each of its allegations in the  
25 Paragraphs above.

26 43. Hartford is informed and believes and on that basis alleges that they are entitled to  
27 implied indemnity, based on the agreements referred to above and principles of maritime and  
28

1 federal common law. A right to indemnity for the damages, losses and expenses is implied, if not  
2 expressed, in the terms of the agreements between the parties.

#### 3 **FOURTH CAUSE OF ACTION**

##### 4 **(Negligence)**

5 44. Third-Party Plaintiff incorporates by reference each of their allegations in  
6 Paragraphs above.

7 45. Third-Party Defendants hired, retained, recommended and entrusted MDII to  
8 carefully, safely, and properly pickup the Machines from the Port of Oakland and deliver to  
9 Fremont, California.

10 46. MDII, and its drivers or employees, were at all relevant times the agents or  
11 subagents of Third-Party Defendants.

12 47. Third-Party Defendants owed a duty to ensure that its carriers and agents are  
13 reputable, reliable, safe, knowledgeable, and comply with generally accepted trucking standards  
14 and applicable laws and regulations.

15 48. Third-Party Defendants further had a duty to ensure that the motor carrier it  
16 retained and/recommended contained all the appropriate and necessary information about the  
17 Machines and any specialized instructions regarding the cargo and its delivery.

18 49. Third-Party Defendants had a further duty to ensure that its client, Lapmaster, was  
19 properly protected in the event of damage to the Machines during their transport, whether caused  
20 by its motor carrier or agent.

21 50. Third-Party Defendants breached their duties by failing to retained, assign,  
22 recommend, or hire a reputable, reliable, safe, knowledgeable motor carrier who would comply  
23 with generally accepted trucking standards and applicable laws and regulations.

24 51. Third-Party Defendants breached their duties by failing to ensure that the motor  
25 carrier it retained and/recommended contained all the appropriate and necessary information about  
26 the Machines and any specialized instructions regarding the cargo and its delivery.

27 52. Third-Party Defendants breached their duties by failing to ensure that its client,  
28



1 Lapmaster, was properly protected in the event of damage to the Machines during their transport,  
2 whether caused by its motor carrier or agent, and for failing to bind/procure appropriate insurance  
3 despite quoting Lapmaster for the same.

4 53. Third-Party Defendants' breach proximately caused the damages claimed and  
5 outlined above.

6 54. Pursuant to the terms and conditions of its policy of insurance with its insured,  
7 Hartford has indemnified and paid, and is in the process of indemnifying and paying, Lapmaster  
8 for such covered losses in an amount of \$820,554.92, an exact amount to be proven at trial, and  
9 thereby has become subrogated to the rights of its insured against these Third-Party Defendants.

10 WHEREFORE Third-Party Plaintiff requests the following relief against Third-Party Defendants:

11 A. For the amount of damages resulting the accident involving the Machines and paid  
12 to and/or on behalf of their insured under the policy in the amount of \$820,554.92 and as proven at  
13 trial;

14 B. For costs and attorneys fees permitted by law;

15 C. For prejudgment interest as permitted by law, including, but not limited to,  
16 California Civil Codes §§ 3287 and 3288; and

17 D. For such other relief as this Court deems just and fair

18 **DEMAND FOR JURY TRIAL ON THIRD-PARTY CLAIMS**

19 Hartford hereby demands a jury trial on all Third-Party Claims for which jury trial is  
20 allowed by law.

21 DATED: April 16, 2008

22 **BAUMAN LOEWE WITT & MAXWELL, PLLC**

23  
24 By: /s/ Christopher J. Brennan

25 Christopher J. Brennan

26 *Attorneys for Hartford Fire Insurance Company*  
27  
28

## EXHIBIT A



**Nippon Express**  
J.D.B. Arrow International

# WAYBILL

(COMBINED TRANSPORT DOCUMENT)

NON-NEGOTIABLE

<b>Shipper</b> HAMA CO., LTD. 5-5-15, NISHI-GOTANDA, SHINAGAWA-KU TOKYO, JAPAN		RECEIVED the goods or the container(s) or package(s) said to contain the cargo herein mentioned in apparent good order and condition unless otherwise indicated, to be transported and delivered or transhipped as herein provided. The receipt, custody, delivery and transhipping of the goods are subject to the terms and conditions on the face and back hereof, whether written, typed, stamped or printed.	
<b>Consignee</b> HAYWARD QUARTZ TECHNOLOGY, INC. 1700 CORPORATE WAY FREMONT, CA94539 TEL: 510-657-9605		<b>Waybill Number</b> YOSF4451887	
<b>Notify Party</b> LAPMASTER INTERNATIONAL 501 W. ALCONQUIN ROAD MOUNT PROSPECT IL 60056 USA 224-659-7101 224-659-7103		<b>Export Reference</b>  <b>Forwarding Agent Reference</b> YOSF 4451887 YOSF 4451921 OTI LICENCE 016327N	
<b>Place of Receipt</b> YOKOHAMA, CY		<b>Point and Country of Origin</b> JAPAN	
<b>Place of Delivery</b> OAKLAND, CA, CY		<b>For Cargo Release Contact</b> NIPPON EXPRESS U.S.A., INC. SAN FRANCISCO OCEAN CARGO BRANCH 250 UTAH AVENUE, SOUTH SAN FRANCISCO CA 94080 U.S.A. PHONE: (650) 827-3100 FAX: (650) 952-0380	
<b>Port of Loading</b> YOKOHAMA, JAPAN		<b>Routing of Transportation</b>  	
<b>Port of Discharge</b> OAKLAND, UNITED STATES		<b>Final Destination (for the Merchant's reference only)</b>  	

Mark and Number Container No. and Seal No.	No. of Pieces Containers	Description of Packages and Goods Type or Kind of Packages or Containers	Gross Weight	Measurement
HIM-7880-1 LAPMASTER 288F-L OAKLAND CASE NO. 1-4 MADE IN JAPAN	4 CONTAINERS	SHIPPER'S LOAD & COUNT FOURWAYTYPE PRECISION FLAT LAPPING MACHINE FOURWAYTYPE PRECISION FLAT POLISHING MACHINE	45.010.00 KGS	115.371 M3
HIM-7880-2 LAPMASTER 288F-P OAKLAND CASE NO. 1-3 MADE IN JAPAN	7 CASES			
(CONTAINER NO) (SEAL NO)		AS PER ATTACHED SHEET		
		FREIGHT COLLECT AS ARRANGED SAY FOUR (4) CONTAINERS ONLY.		

846090810053, 846090810055, 846090810053 If Merchant enters a value, the Ad Valorem rate will be charged. These commodities licensed by U.S. for ultimate destination Diversion contrary to U.S. Law prohibited	
<b>Freight &amp; Charges</b> R/T FREIGHT COLLECT AS ARRANGED	Prepaid Collect

<b>Rate</b> Y 109.7100	<b>Prepaid at</b> Total Prepaid in Yen	<b>Payable at</b> DESTINATION No. of original Waybill(s) ONE (1)	<b>Place of Waybill(s) Issue</b> YOKOHAMA, JAPAN	<b>Dated</b> Dec-1 2007
Laden on board the Vessel Date: Dec-1 2007			IN WITNESS WHEREOF, the number of Waybill(s) stated herein, all of the same tenor and date, has been signed. AS CARRIER, NIPPON EXPRESS U.S.A. (ILLINOIS), INC. NIPPON EXPRESS CO., LTD.	
Port of Loading: YOKOHAMA, JAPAN			By: [Signature]	

1. Unless otherwise set out on the face and back hereof, the Goods to be carried are subject to the terms and conditions provided for on the back of the Carrier's Bill of Lading and to the terms of Carrier's applicable tariff, both of which may be seen at the Carrier's office or at those of his authorized agents. Every reference therein to the words "Bill(s) of Lading" shall be read and construed as a reference to the words Non-Negotiable Waybill(s) and the terms and conditions thereof shall be read and construed accordingly, notwithstanding the Clause which requires a surrender of Bill(s) of Lading duly endorsed to the Carrier on delivery of the goods stated in NIPPON EXPRESS U.S.A. (ILLINOIS), INC. Combined Transport Bill of Lading.

In accepting this Waybill, the Shipper agrees to be bound by all stipulations, exceptions, terms and conditions on the face and back of this Waybill and the Carrier's Bill of Lading, whether written, typed, stamped or printed, as fully as if signed by the Shipper, any local custom or privilege to the contrary notwithstanding, and agrees that all agreement or freight engagement for and in connection with the carriage of the Goods are superseded by this Waybill.

2. Except as otherwise specifically provided in this Waybill, delivery of the Goods will be made only to the consignee named on the face hereof, or his authorized agents, on production of proof of identity. Notice of arrival of the goods will, in the absence of other instructions, be sent to the consignee or the person to be notified, by ordinary methods. The Carrier is not liable for non-receipt or delay in the dispatch of such notice.

3. (1) Should the Shipper require delivery elsewhere than the place of delivery or the port of discharge as shown on the face hereof and should written instructions be given by the Shipper to the Carrier or his agents, the Carrier may, at his discretion, deliver the Goods at the place elsewhere than at the place of delivery or the port of discharge as shown on the face hereof.

(2) Should the Consignee require delivery elsewhere than at the place of delivery or the port of discharge as shown on the face hereof and should written instructions given by the Consignee to the Carrier or his agents, the Carrier may, at his discretion, without any notice to the Shipper, deliver the Goods at the place elsewhere than the place of delivery or the port of discharge as shown on the face hereof.

(3) Should delivery be required to be made to a party other than that named as the Consignee, authorization must be given in writing by the Shipper to the Carrier or his agents.

## EXHIBIT B

**ITG TRANSPORTATION SERVICES, INC.**

1500 EISENHOWER LANE, SUITE 100

LISLE, ILLINOIS 60532

TELEPHONE 630-725-4650 FAX 630-725-4699

AFTER 5:00P.M. AND WEEKENDS, PLEASE USE 24 HR EMERGENCY # 630-209-4649  
PROFILE#: QUOTE #:

**IMPORT DISPATCH**

DATE: 12/21/07

ITG REF #: 8010284/85/86/88

BOOKING/BL#: COSU100083390

VENDOR NAME: MASON DIXON - *Jose*

VENDOR PH: *510-433-1020* FX *510-433-1025*

SSL: COSCO

EQUIP: 2X40' STANDARD & 2 FLAT RACKS (IN GUAGE)

TOFC/COFC/SPEQ: TOFC

HAZ(Y/N): N

DEC ATTACHED (Y/N): N

UNIT (INITIAL & NUMBER): CBHU610576-2 (40' STD) // CLHU373710-1 (20' STD) //

TRIU060411-1 (1X20' FLAT RACK) // TRIU063007-0 (1X20' FLAT RACK)

CHASSIS PICK UP: SSA TERM & COSCO

ORIGIN: SSA TERMINALS

RAIL PICKUP #: D/O ATTACHED

LFD: 12/21/07

CONTACT:

PHONE: 510-891-2922

1717 MIDDLE HARBOR ROAD

CNTR YARD - 510.238.4400

OAKLAND

CA

APPOINTMENT DATE: \*\* PLS PULL BOTH 1X20' STD & 1X40' STD TODAY 12/21 AND  
DROP TODAY - ASAP //// PLS PULL BOTH FLAT RACKS ON WEDNESDAY 12/26 AND  
DROP BY 1PM \*\*\*RIGGERS ARE HIRED FOR THE FLAT RACKS

DROP/LIVE (D/L): D

DEST: HAYWARD QUARTZ TECHNOLOGY LOAD REF:

CONTACT: RCVNG

PHONE: 510-657-9605

1700 CORPORATE WAY

FREMONT

CA

94539

EMPTY CNTR RETURN: SSA TERM & COSCO

c/o SSL: COSCO

CHASSIS RETURN: SSA TERM & COSCO

**DRIVER MUST BE ON TIME!! ANY DELAYS MUST BE REPORTED TO ITG IMMEDIATELY!!!!**  
ITG WILL NOT BE RESPONSIBLE FOR ANY ACCESSORIALS NOT APPROVED AT TIME OF MOVE.  
IF AFTER HOURS, PLEASE CALL THE 24 HOUR EMERGENCY NUMBER ABOVE.

DETENTION CHARGES REQUIRE SIGNED PROOF OF DELIVERY RECEIPT WITH IN/OUT TIMES.

CHASSIS SPLIT CHARGES MUST BE BILLED DIRECTLY TO THE ABOVE STEAMSHIP LINE.

ANY DEVIATION FROM THIS WORK ORDER MUST BE AUTHORIZED BY ITG IN WRITING!

SENT BY: SHERRY X 4677



01/11/2008 12:24 5104331026

MDII OAK

PAGE 02

**MASON DIXON INTERMODAL, INC.**Inv #: **9470-009538-0**  
Appt. time: **ASA**Oakland Terminal Stockton Terminal Fresno Terminal  
510-433-1020 209-941-0644 559-275-5400

Railroad PIU #:

SHIPPER:

CONSIGNEE/RECEIVER: Container Line: **COSCO****HAYWARD QUARTZ TECHNOLOGY****1700 CORPORATE WAY****FREMONT****510-657-9605**

DATE <b>12/27/2007</b>	P.O.#	CONTR./TRAILER# <b>TRIU 0604111</b>	R/R <b>OAKLAND</b>
NO. OF PKGS.	DESCRIPTION OF COMMODITIES		WEIGHT
T/L	F.A.K.		
	Appt #:	SPOT LOCATION	
	Appt Conf. #:	Booking #	
	<b>Directions:</b> <b>880S, EXIT MISSION BLVD&lt;, WARM SPRINGS BLVD&lt;, CORPORATE WAY&gt;</b>		

**SEAL INTACT #**

It is your obligation to notify dispatch when the trailer is available for pickup. MDII will not guarantee the pickup of an empty trailer on same day if not called in to dispatch before 2:30 p.m. This trailer is hauled by an independent contractor/owner operator. The contractor is not an employee of MDII. MDII is not responsible for damages, losses, etc., that may occur on your property. Acceptance of this "Delivery Receipt" is your acknowledgment to hold harmless MDII for any damages, losses, etc., that may occur from the delivery or pickup of this trailer or container.

NOTICE: This is a use controlled trailer with limited "free time." You must accept delivery within 48 hours and release back to us within 48 hours if you are to avoid additional charges. Truckers are required to advance rail and steamship charges on your behalf and are permitted to recover these charges from you pursuant to Civil Code §2197. You may request our dispatch operations to have the driver stay with the load and will have to pay for any time in excess of two hours. If you request that our driver unload, you have no free time and will be billed for his services from the time of arrival until departure. Signature of your company representative on this receipt verifies the time and date of the trailer receipt, trailer and contents in good condition and seal intact; driver's time of arrival and departure, and acknowledges liability for all trucking and associated charges. Failure to pay billed charges will result in a lien on shipments including the costs of storage and appropriate security pursuant to Civil Code §3051.5.

DELIVERED BY	DATE	TIME IN	TIME OUT	RECEIVED IN GOOD ORDER BY CONSIGNEE	DATE
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\*These charges include (1) fees to pay for regulation of transportation companies by the California Public Utilities Commission and (2) taxes paid to California cities instead of excise or business license taxes they could otherwise impose"  
**I.C.C. AND P.U.C. REQUIRE PAYMENT OF FREIGHT CHARGES WITHIN SEVEN DAYS.**

Jguajardo

01/11/2008 12:24 5104331826

MDII DAK

PAGE 03

**MASON DIXON INTERMODAL, INC.**

Oakland Terminal Stockton Terminal Fresno Terminal  
510-433-1020 209-941-0644 559-275-3400

Inv #: **9470-009539-8**Appt. time: **ASA**

SHIPPER:

CONSIGNEE/RECEIVER:

Railroad P/U#:

Container Line: **COSCO****HAYWARD QUARTZ TECHNOLOGY****1700 CORPORATE WAY****FREMONT****510-657-9605**

DATE <b>12/27/2007</b>	P.O.#	CONTR./TRAILER# <b>TRIU 0630070</b>	R/R <b>OAKLAND</b>
NO. OF PKGS.	DESCRIPTION OF COMMODITIES		WEIGHT
T/L	F.A.K.		
Appt #:		SPOT LOCATION	
Appt Conf. #:		Booking #	
<b>Directions:</b> <b>880S, EXIT MISSION BLVD&lt;, WARM SPRINGS BLVD&lt;, CORPORATE WAY&gt;</b>			

**SEAL INTACT #**

It is your obligation to notify dispatch when the trailer is available for pickup. MDII will not guarantee the pickup of an empty trailer on same day if not called in to dispatch before 2:00 p.m. This trailer is hauled by an independent contractor/owner operator. The contractor is not an employee of MDII. MDII is not responsible for damages, losses, etc. that may occur on your property. Acceptance of this "Delivery Receipt" is your acknowledgment to hold harmless MDII for any damages, losses, etc. that may occur from the delivery or pickup of this trailer or container.

**NOTICE:** This is a use controlled trailer with limited "free time." You must accept delivery within 48 hours and release back to us within 48 hours if you are to avoid additional charges. Truckers are required to advance rail and steamship charges on your behalf and are permitted to recover these charges from you pursuant to Civil Code §2187. You may request our dispatch operations to have the driver stay with the load and will have to pay for any time in excess of two hours. If you request that our driver unload, you have no free time and will be billed for his services from the time of arrival until departure. Signature of your company representative on this receipt verifies the time and date of the trailer receipt; trailer and contents in good condition and seal intact; driver's time of arrival and departure, and acknowledges liability for all trucking and associated charges. Failure to pay billed charges will result in a lien on shipments including the costs of storage and appropriate security pursuant to Civil Code §3051.5.

DELIVERED BY	DATE	TIME IN	TIME OUT	RECEIVED IN GOOD ORDER BY CONSIGNEE	DATE
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guajardo

\*These charges include (1) fees to pay for regulation of transportation companies by the California Public Utilities Commission and (2) taxes paid to California cities instead of excise or business license taxes they could otherwise impose"  
**I.C.C. AND P.U.C. REQUIRE PAYMENT OF FREIGHT CHARGES WITHIN SEVEN DAYS.**

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**PROOF OF SERVICE**

I, Cheryl L. Solomine, declare as follows:

I am employed with the law firm of Bauman Loewe, Witt & Maxwell, P.L.L.C., whose address is 8765 E. Bell Road, Suite 204, Scottsdale, AZ 85260. I am over the age of eighteen years, and am not a party to this action.

On April 16, 2008, I emailed the foregoing document described as follows:

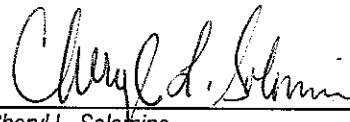
**HARTFORD FIRE INSURANCE COMPANY'S THIRD -PARTY COMPLAINT**

on the interested parties in this action by:

  X   Service was made by email to the following:

Vincent Castillo  
Lombardi, Loper & Conant, LLP  
Lake Merritt Plaza  
1999 Harrison Street, Suite 2500  
Oakland, CA 94612  
[vc@llcllp.com](mailto:vc@llcllp.com)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 16, 2008, at Scottsdale, Arizona.

  
\_\_\_\_\_  
Cheryl L. Solomine